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NO. 610

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1968

JOHN L. SULLIVAN, TAX COMMISSIONER
OF THE STATE OF CONNECTICUT, ET AL.,
Petitioners

vs.

UNITED STATES OF AMERICA
AND
LIEUTENANT STANDLEY D. SCHUMAN,
U.S.N., ET AL.,
Respondents

BRIEF OF AMICI CURIAE IN SUPPORT OF PETITIONERS' PETITION FOR WRIT OF CERTIORARI

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TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

ARGUMENT

Come now the State of Texas, with which twenty-eight other undersigned states join, and file this their brief as amici curiae in support of the petition of Petitioner, the State of Connecticut, for a writ of certiorari, for the reversal of the final judgment of the United States Court of Appeals, and for the relief prayed for by the Petitioner herein.

Connecticut, since 1947, has imposed a sales tax on the purchase of tangible personal property in Connec-

ticut by nonresident military personnel stationed in Connecticut pursuant to military orders (Chap. 219, Conn. Gen. Stat. Sec. 12-408). Although the ultimate incidence of the tax falls upon the person from whom the retailer is required by statute to collect reimbursement, the sales tax is a tax on the transaction and not upon the ownership of personal property, This is not only so in Texas but also in the other states joining as parties to this brief. *Calvert v. Canteen Co.*, 371 S.W. 2d 556 (Tex.Sup. 1963).

A use tax, designed to reach transactions which cannot be reached by the sales tax, is imposed to compliment the sales tax and to promote equality of taxation on personal property whether purchased in state or out-of-state. *Avco Mfg. Corp. v. Connelly*, 145 Conn. 161, 140 A.2d 479 (1958).

The Court of Appeals of the Second Circuit held that a state tax on the sale of tangible personal property within the state was a tax "in respect of personal property" within the purview of Section 514 (1) of the Soldiers and Sailors Civil Relief Act (50 U.S.C., App. Sec. 574), and was, therefore, in contravention of that Act.

The pertinent provision of Section 514 (1) is as follows:

> "For the purpose of taxation in respect of personal property . . . of any such [military] person by any state . . . of which such person is not a resident or in which he is not domiciled . . . , [his] personal property shall not be deemed to be located or present in or to have a situs for taxation in such state. . . ."

Exemptions from taxation do not rest upon implication. *United States Trust Co. of New York v. Helver-*

ing, 307 U.S. 57 (1939). Where a statute purports to grant an exemption from taxation, the universal rule of construction is that the particular provision for exemption must be construed strictly against the party asserting the exemption in the absence of an express legislative intent that the exemption should be otherwise construed. The exemption must be clearly defined. Otherwise, any doubt must be resolved against the party asserting the exemption, as exemptions from taxation are not favored. 51 Am. Jur. 526-528, Taxation, Section 524; 84 C.J.S. 437-443, Taxation, Section 227.

Although Section 514 is read "with an eye friendly to those who drop their affairs to answer their country's call," *Le Maistre v. Leffers,* 333 U.S. 1 (1948), a strict construction of the Act is required to determine whether the subject taxes are within the immunity provided. Under these rules of strict construction, it is clear that Section 514 does not grant a direct tax immunity but merely requires that the personal property of the nonresident serviceman be treated as remaining in his home state for purposes of taxation. The intent of Congress is clear to exempt the nonresident serviceman only from property taxes or taxes based on the situs of property. The immunity provided for in Section 514 should, therefore, be restricted to those taxes whose incidence are dependent upon the serviceman's residence and the situs of his personal property.

The Connecticut sales tax, a tax on the "privilege of selling tangible personal property," is dependent, not upon the situs of the property, but upon the location of the sales transaction. The incidence of the tax is upon a sales transaction rather than upon property or its use, based upon the residence or domicile of the

purchaser. The Connecticut tax, being a tax on a transaction, is not relevant to the criteria referred to in Section 514, since this section speaks only of a tax on personal property and not of a tax on the act of purchasing the property. The distinction between a tax which is dependent upon the residence or domicile of the purchaser and a sales and use tax, which is dependent only upon the situs of the sales transaction, is, in this case, controlling. The sales and use tax is imposed only upon the performance of an act and the fact that it is proportioned in amount to the value of the property does not make it a property tax.

The authority to exact a sales tax is dependent solely upon the authority to tax a transaction consummated within the state's borders regardless of the residence of the purchaser or the location of the place at which the property is to be used. The Court has traditionally upheld the application of similar taxes on sales even though the purchase and the only use of the property occur outside of the State: *International Harvester Co. v. Dept. of Treasury,* 322 U.S. 340 (1940); *Dept. of Treasury v. Wood Preserving Co.,* 313 U.S. 62 (1941); *McGoldrick v. Felt & Tarrant Mfg. Co.,* 309 U.S. 70 (1940), all of which involved a sales tax on purchases by out-of-state residents accepting delivery within the state; *McGoldrick v. Berwind-White Coal Mining Co.,* 309 U.S. 33 (1940), involving a sales tax on an interstate shipment to the state in which the sale occurred; *Pacific States Pipeline Co. v. Utah,* 372 U.S. 605 (195[illegible], involving a sales tax on an interstate shipment from the taxing state.

Section 514 has placed a nonresident serviceman in the same position as the private citizen who has maintained his residence and property only in his home

state. Therefore, if the tax would apply to a private citizen of the serviceman's home state, the tax would likewise apply to the nonresident serviceman. The tax in question, being a tax on the transaction rather than on the property, would clearly be applicable to any nonresident private citizen who purchased tangible personal property in the State of Connecticut. This is true whether the sale be made by mail order or otherwise.

It is submitted that the exemption provided for in Section 514 should be restricted to those taxes which are clearly within the language of the Act, that is, taxes which are dependent upon the situs of the property, *Dameron v. Broadhead,* 345 U.S. 322, (1952) or taxes involving an annual license fee on automobiles. *California v. Buzard,* 382 U.S. 386 (1966). The exemption provided for nonresident servicemen should not be extended by implication to include a tax not in the nature of a property tax or a tax based on the situs of property.

Had Congress intended to exempt all servicemen from all revenue raising tax measures, it must be presumed that it would have clearly done so by the use of appropriate language in the statute designed to bring about that result. Instead, in Section 514 (1), Congress merely declared that for purposes of taxation by a state (involving personal property of servicemen) of which state he is not a resident or in which he is not domiciled, that his property shall not be deemed to be located in or have a tax situs in that state. There is no necessary implication in this kind of language that Congress was exempting thereby all servicemen from all types of state tax revenue measures. It is only by indulging such an inference or implication that the statute can be expanded or stretched

to achieve such a result. Since the law does not permit tax exemptions to be construed by inference or implication but requires a strict construction, it necessarily follows that Section 514 (1) only exempts the serviceman from those taxes whose incidence is dependent upon the situs of the property or the individual's residence or domicile. The reach of such taxes falls short of sales and use taxes which do not come within such characterization. Furthermore, a sale (which is the incidence of the tax) is completed before the personal property becomes the property of the serviceman!

CONCLUSION

WHEREFORE, these amici curiae states submit that the relief prayed for herein by Petitioner State of Connecticut be granted, that a writ of certiorari issue, and that this Court correctly and finally dispose of the important issues presented to the end that the nonresident serviceman's tax exemption not be extended by construction and implication to include sales and use taxes and other types of state taxes which are not based on the situs of property, as are property taxes and other like taxes clearly comprehended by Section 514 (1) of the Soldiers and Sailors Civil Relief Act.

Respectfully submitted,

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PROOF OF SERVICE

I, Kerns B. Taylor, one of the attorneys for Crawford C. Martin, Attorney General of the State of Texas, as one of the amici curiae herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the _____ day of February, 1969, I served copies of the foregoing "Brief of Amici Curiae in Support of Petitioners' Petition for Writ of Certiorari" on the several parties thereto, by mailing a copy in a duly addressed envelope, with first class postage prepaid, to each of the following attorneys of record in this cause:

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